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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re  
MI PUEBLO SAN JOSE, INC.,  
Debtor and Debtor-in-Possession.

CASE NO. 13-53893-ASW

Chapter 11

**OPPOSITION TO MOTION OF AZTECA  
MILLING L.P. FOR ALLOWANCE AND  
PAYMENT OF CHAPTER 11  
ADMINISTRATIVE EXPENSE UNDER  
BANKRUPTCY CODE § 503(b)(9)**

**[NO HEARING SET]**

**TO: MI PUEBLO SAN JOSE, INC., AZTECA MILLING, L.P., THEIR ATTORNEYS OF  
RECORD, AND OTHER PARTIES-IN-INTEREST:**

PLEASE TAKE NOTICE that Wells Fargo Bank, N.A. ("Bank") hereby objects to  
the Motion of Azteca Milling, L.P. for Allowance and Payment of Chapter 11 Administrative  
Expense Claim under Bankruptcy Code § 503(b)(9) ("Motion") on the following grounds:

The Motion requests an order from the Court allowing Azteca Milling, L.P.  
("Azteca") an administrative expense claim in the amount of \$119,519.31 and ordering that  
administrative expense claim to be paid pursuant to that certain Order (I) Granting Administrative

1 Status to Debtor's Undisputed Obligations to Vendors Arising From Post-Petition Delivery of  
2 Goods Pre-Petition and Authorizing Debtor to Pay Such Obligations in the Ordinary Course of  
3 Business; (II) Authorizing Payment for Goods Received Within 20 Days of Filing and Establishing  
4 Administrative Claims Bar Date for Section 503(b)(9) claims and (III) Establishing Procedures and  
5 to Allow Claims of Perishable Agricultural Commodities Act and Packers and Stockyards Act  
6 ("Procedures Order") entered on July 31, 2013. The Motion is accompanied by a set of invoices  
7 attached as Exhibit A to the Motion, which Azteca contends supports the Motion.

8 No order should be entered on the Motion until such time as Azteca sets Motion for  
9 hearing, as required by 11 U.S.C. § 503(b), which provides as follows:

10 After **notice and a hearing**, there shall be allowed administrative  
11 expenses . . . (Emphasis added.)

12 In addition, no order should be entered on the Motion allowing its payment until  
13 such time as Mi Pueblo San Jose, Inc. ("Debtor") follows the procedures set forth in the Procedures  
14 Order, which provides in Section 6 thereof, as follows:

15 **Prior to payment of any claim under Bankruptcy Code section**  
16 **503(b)(9)**, PACA or PSA pursuant to this Order, Mi Pueblo shall  
17 deliver to WFB and its counsel Robert B. Kaplan, Esq. and Nicolas  
18 De Lancie, Esq. via electronic mail the invoices, proof of delivery,  
19 summary of the foregoing, dates of delivery and any other documents  
20 Mi Pueblo deems appropriate (**each a "Claim Package"**). WFB shall  
21 have three business days after the date of its receipt of each Claim  
22 Package to review the documentation supplied. If WFB does not  
23 object to payment of the claim that is the subject of the Claim  
24 Package within the specified time period by delivering its objection to  
25 the Claim Package by electronic mail to Mi Pueblo's counsel Robert  
26 G. Harris, Esq. or Wendy Smith, Esq., Mi Pueblo may pay that claim.  
27 If WFB does object to payment of the claim, and the parties are  
28 unable to resolve the objection through negotiation, then Mi Pueblo  
shall set a hearing on not less than 20 calendar days' notice on WFB's  
objection, WFB shall file and serve its objection and any supporting  
authorities and evidence (the "WFB Brief") on Mi Pueblo and the  
claimant within 5 calendar days of the date of its objection. Mi  
Pueblo and the claimant shall file and serve any response to said  
objection not later than 5 calendar days' after service of the WFB  
Brief. (Emphasis added.)

26 To date, the Debtor has not presented to the Bank a Claim Package with respect to  
27 the proposed payment of the Azteca administrative claim as required by Section 6 of the Procedures  
28 Order. If the Bank objects to the Claim Package, then the Debtor is required to set a hearing with

1 this Court to determine whether any Section 503(b)(9) claim can be paid.

2 Finally, although the Bank recognizes that this is an issue for another day, it is  
3 important to note that there are no provisions in 11 U.S.C. § 503 or in the Bankruptcy Code that  
4 require the immediate payment of allowed claims under 11 U.S.C. § 503(b)(9). See In re  
5 Bookbinders' Restaurant, Inc. (2006) WL 3858020 (Bankr. E.D. Pa. December 28, 2006). For this  
6 reason alone, no order should be entered at this time authorizing payment of the Section 503(b)(9)  
7 claim requested in the Motion.

8  
9 DATED: August 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP  
ROBERT B. KAPLAN, P.C.  
WALTER W. GOULDSBURY III

11  
12 By: /s/ Robert B. Kaplan  
13 ROBERT B. KAPLAN, ESQ.  
14 Attorneys for WELLS FARGO BANK, NATIONAL  
15 ASSOCIATION  
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

3 I am employed in the City and County of San Francisco, State of California. I am over the  
4 age of 18 and not a party to the within action; my business address is: Two Embarcadero Center,  
5th Floor, San Francisco, California 94111.

5 On August 26, 2013 I served the document(s) described as **OPPOSITION TO MOTION**  
6 **OF AZTECA MILLING L.P. FOR ALLOWANCE AND PAYMENT OF CHAPTER 11**  
7 **ADMINISTRATIVE EXPENSE UNDER BANKRUPTCY CODE § 503(b)(9)** in this action  
8 addressed as follows:

9 ☒ (TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF))  
10 Pursuant to the controlling Rules, the aforementioned document(s) will be served by the  
11 court via NEF and proper link(s) to the document(s).

12 Executed on August 26, 2013 at San Francisco, California.

13 I declare under penalty of perjury under the laws of the United States that the above  
14 is true and correct.

15 Angela Pereira

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